Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Review of Telecommunications	)	WC Docket No. 02-313
Regulations Within the Purview of the	)	
Wireline Competition Bureau	)	

SPRINT REPLY COMMENTS

Sprint Corporation, on behalf of its local, long distance and wireless divisions ("Sprint"), hereby replies to a proposal made by the National Telecommunications Cooperation Association ("NTCA") in its comments filed in response to the Commission's 2002 Biennial Review proceeding.[1]

I. RULE 54.101: THE COMMISSION CANNOT GRANT THE RELIEF NTCA SEEKS

The Commission cannot in this proceeding grant the relief that NTCA seeks: Rule 54.101 should be revised to "add" equal access to the list of services that must be provided for carriers to be eligible for universal service fund ("USF") support.[2] The Commission commenced this proceeding pursuant to Section 11 of the Communications Act, which, as NTCA correctly recognizes, seeks to "*lessen* administrative and regulatory burdens."[3] NTCA's proposal to *add* regulatory burdens to CMRS carriers is completely antithetical to the purpose of Section 11, as NTCA itself acknowledges. In this regard, Chairman Powell has observed that by "any stan-

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[1] *See Public Notice,* The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireline Competition Bureau, WT Docket No. 02-313, FCC 02-267 (Sept. 26, 2002). Sprint's failure to address other issues raised in the comments should not be interpreted as meaning that it either supports or opposes the proposals.

[2] *See* NTCA Comments at 5-6 (emphasis added).

[3] *Id.* at 2 (emphasis added).

dard," the CMRS market is "the most competitive market in the communications industry."[4] There is, therefore, no possible legal basis to add new regulations to CMRS carriers in a proceeding designed to "repeal" existing rules.[5]

NTCA's argument also rests on numerous assumptions that are faulty and factually inaccurate. For example, NTCA begins its argument by asserting that a requirement that incumbent LECs, but not CMRS carriers, provide equal access contravenes NTCA's concept of "regulatory parity."[6] Congress, however, was very clear in rejecting the concept of regulatory parity in enacting the 1996 Act, deciding that regulation should be based on one's respective market power. Specifically, Congress imposed minimal requirements on competitive CMRS carriers (*see* Section 251(a)), additional requirements on landline local exchange carriers (*see* Section 251(b)), and even more onerous requirements on incumbent LECs like NTCA's members (*see* Section 251(c)). As Chairman Powell has observed, "[i]f the [1996] Act means anything, it means that we should not impose regulations just for the sake of uniformity."[7]

NTCA further asserts that CMRS carriers have an "unfair advantage" over ILECs because they do "not incur the cost of equal access."[8] In fact, rural ILECs supported imposition of

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[4] Separate Statement of Chairman Powell, 2002 Biennial Review – Spectrum Cap, 16 FCC Rcd 22668, 22727 (2001).

[5] *See* 47 U.S.C. § 161(b).

[6] *See* NTCA Comments at 6.

[7] Separate Statement of Commissioner Powell, *Truth-in-Billing,* CC Docket No. 98-170, 14 FCC Rcd 7562, 7567 (1999). *Compare Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act,* 13 FCC Rcd 23254, 23278 ¶ 60 (1998)("Because of the disparity in market power between DBS providers and cable operators, we find unpersuasive the cable industry's call for "regulatory parity" for entities that are not similarly situated.").

[8] NTCA Comments at 6.

an equal access rule on themselves.[9] Moreover, rural ILECs requested and received over a decade ago a special waiver so they could expense their equal access costs in the year the costs were incurred.[10] Thus, rural ILECs recovered their equal access conversion costs long ago.

NTCA's final substantive argument – imposing a new equal access requirement on CMRS carriers would provide "immediate and tangible benefits to the American public"[11] – is also baseless. Most CMRS carriers offer customers the option to purchase "one rate" plans, where the customer pays one airtime charge, whether calling someone next door or across the country. No rational consumer would decide to use an unaffiliated long distance carrier because the customer would pay more and receive two bills: airtime charges *and* long distance charges. As Commissioner Abernathy has correctly noted:

> [T]he imposition of substantial costs on wireless carriers that choose to implement equal access would be pointless, because it is unlikely that consumers would choose a different interexchange carrier than their wireless provider . . . . [I]t seems doubtful that a consumer would choose to pay an additional charge to obtain service from a different long distance provider.[12]

In practical terms, NTCA is proposing that CMRS carriers incur the cost of implementing equal access to provide a feature that no customer would use. The only way that NTCA's position would make sense is if NTCA believes that the competitive position of its rural ILEC members would be enhanced by forcing competitors to incur new costs needlessly.

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[9] *MTS/WATS Market Structure – Phase II Order,* 100 F.C.C.2d 860, 866 ¶ 16 (1985)("The ITCs [independent telephone companies] generally support the proposal that they be required to implement equal access.").

[10] *See NECA Waiver Order,* 3 FCC Rcd 6042 (1988). In contrast, the RBOCs were required to recover their equal access costs over an eight-year period ending in 1993.

[11] NTCA Comments at 6.

[12] Separate Statement of Commissioner Kathleen Q. Abernathy, *Universal Service,* Docket No. 96-45, FCC 02J-1 (July 10, 2002).

Sprint submits that the concept of equal access and interexchange service makes no sense in today's CMRS market. With "one rate" plans, there is no "interexchange service" because the entire country constitutes one exchange.[13] One cannot provide equal access unless there exists more than one exchange, such that there is an "interexchange service" for calls between different exchanges. Notably absent in NTCA's comments is any discussion of how CMRS carriers could possibly implement equal access to interexchange carriers when there is only one exchange.

II. CONCLUSION

Chairman Powell noted last week that CMRS has been "a resounding success at introducing facilities-based competition."[14] NTCA's proposal is nothing more than an attempt to block CMRS providers from attaining Eligible Telecommunications Carrier status in order to participate in the Universal Service program and thus compete more effectively with NTCA's members. This issue has been raised in another proceeding.[15] If the Commission thinks NCTA's arguments to have any merit, it should be addressed in that forum. A proposal to add new regulations on the competitive CMRS industry should not be entertained in a proceeding designed to repeal existing regulations.

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[13] The Act defines "telephone toll service" as service "between stations in *different* exchange areas for which there is *made a separate charge* not included in the contracts with subscribers for exchange service." 47 U.S.C. § 153(48)(emphasis added). With "one rate" plans, a CMRS carrier does not provide telephone toll service.

[14] *See* Remarks of Michael K. Powell at the Silicon Flatirons Telecommunications Program, "Broadband Migration III: New Directions in Wireless Policy" (Oct. 30, 2002).

[15], *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-115. *Recommended Decision*, FCC 02J-1 at ¶ 7 (July 10, 2002).

Respectfully submitted,

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November 4, 2002